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Chairman: Mr. Mochochoko ..... (Lesotho)

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Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*)

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The meeting was called to order at 3.10 p.m.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*) (A/54/10 and Corr.1 and 2)

1. **Mr. Galicki** (Chairman of the International Law Commission), introducing chapter V of the Commission's report, relating to State responsibility, said that the Commission had continued and completed the article-by-article consideration of the draft articles contained in the first part of the Special Rapporteur's second report, before referring them to the Drafting Committee. For the time being, it had limited itself to taking note of the action taken by the Drafting Committee with regard to Part One. Indeed, the Drafting Committee might have to return to some of the articles as its consideration of the rest progressed.

2. At its fifty-first session, the Commission had completed its consideration of chapters III-V in Part One and undertaken a preliminary consideration of the question of countermeasures as envisaged in draft article 30, and its relationship with Part Two of the draft articles. The Special Rapporteur's second report had focused on the overlap between primary and secondary obligations in the draft articles, on the relationship between chapters I, III, IV and V of Part One and on rationalizing the articles.

3. Broad support had been expressed in the Commission for the Special Rapporteur's approach to rationalizing the draft articles in chapter III. The Commission had considered such questions as the existence of a breach of an international obligation; conflicting international obligations; the relationship between wrongfulness and responsibility; the requirement that the international obligation be in force for the State; obligations of conduct and result; obligations of prevention; completed and continuing wrongful acts; composite and complex acts; and the exhaustion of local remedies rule.

4. The question of the distinction between primary and secondary rules had also been discussed in the context of chapter III. While the Commission had adopted the approach of considering only the secondary rules relating to the responsibility of States, as opposed to codifying primary obligations, it had been recognized that a certain amount of overlap existed between the two, especially in the context of the question of breach, which was largely a matter for the primary obligation. It had thus been important to consider the scope of the distinction, since a narrow view of what constituted secondary rules would have restricted the draft too much, while an excessively broad view risked incorporating matters that were part of the primary rules.

5. The Commission had proceeded to undertake its second reading of chapter IV of Part One, dealing with the implication of a State in the internationally wrongful act of another State. The general view was that the text of chapter IV, as adopted on first reading, posed several problems. For example, it had been pointed out that the chapter did not take into account other norms such as *jus cogens* and *erga omnes* obligations It had been emphasized that the theoretical premises and the positioning of the various articles of the draft should be reviewed on the basis of a more objective paradigm, according to which the commission of a wrongful act entailed responsibility even when there was no damage.

6. Support had been expressed for the Special Rapporteur's proposals to recast the chapter. The Commission had considered various matters under the rubric of chapter IV, including the question of assistance or direction to another State to commit an internationally wrongful act, which was dealt with under draft article 27. Some support had been expressed for narrowing down the application of that article to make it clear that the State that had assisted another State in performing an internationally wrongful act would incur responsibility only if the assisting State would have been acting wrongfully if it had committed the act itself. The draft provision would thus conform more closely with the principle *pacta tertiis nec nocent nec prosunt*.

7. With regard to article 28, concerning the responsibility of a State for coercion of another State, the Commission had worked on the assumption that "coercion" was used in the draft articles in the strong sense and did not cover persuasion, encouragement or inducement. It had considered the proposal to extend the limitation clause found in article 28, paragraph 3 — which preserved the responsibility of the State that had committed the internationally wrongful act, albeit under the direction or control or subject to the coercion of another State — to article 27. That would be achieved by moving the clause into a new article 28 *bis*.

8. The Commission had then turned its attention to chapter V, concerning circumstances precluding wrongfulness. At issue were the general excuses available to States in respect of conduct which would otherwise constitute a breach of an international obligation. The Commission had considered the effect of the various circumstances that precluded wrongfulness on the underlying obligation itself and analysed each individual excuse. An intensive debate had been held on the inclusion of the defence of consent in the draft articles, which had resulted

in its referral to the Drafting Committee. The Commission had also examined the other grounds for the preclusion of wrongfulness found in chapter V, namely self-defence, *force majeure*, distress and necessity.

9. The Commission had also had before it a proposal to add two new grounds of preclusion, namely compliance with a peremptory norm and non-compliance caused by prior non-compliance by another State. The former related to how the system established by the Vienna Convention on the Law of Treaties operated in cases of inconsistency with *jus cogens*. Although the invocation of a conflict with *jus cogens* invalidated the treaty as a whole, such cases were rare. The Commission had therefore decided to consider the possibility of "incidental" breaches of perfectly normal treaties in situations where the conflict with *jus cogens* arose not from the terms of the treaty but from the circumstances. Although the problem of occasional inconsistency could be accommodated under the Vienna Convention regime in the context of treaty obligations, it could also arise in connection with other obligations under general international law. Unless such cases of occasional inconsistency were recognized, the potential invalidating effects of *jus cogens* on the underlying obligation seemed excessive. The Commission had therefore considered the possibility of inserting a new article 29 *bis*, as indicated in paragraphs 306-318 of the report.

10. The second provision concerned non-compliance caused by prior non-compliance by another State, the maxim *exceptio inadimpleti contractus* well established in the traditional sources of international law. The Commission had considered that exception both in its broader form, which implied a synallagmatic obligation, and in its narrower form found *inter alia* in the *Chorzów Factory* case. It had considered the proposal to include the narrow variation in the text as a new article 30 *bis* and had decided to ascertain the exact linkage between the proposed text and countermeasures at a later stage during its discussion of countermeasures.

11. The Commission had also considered the possibility of inserting a new article dealing with the procedure for invoking a circumstance precluding wrongfulness; that issue had also been sent to the Drafting Committee.

12. Article 30, on countermeasures as a circumstance precluding wrongfulness, had also received special attention from the Commission. It had decided to retain the article but had recognized that its fate was linked to the outcome of the Commission's consideration of the countermeasures regime in chapter III of Part Two. The provision had been debated further on the basis of an addendum to the Special Rapporteur's report. The question of the inclusion of a dispute settlement regime in the draft articles had been discussed first, since the inclusion of Part Two on countermeasures presupposed that the draft articles would deal with dispute settlement in the form of a convention. The Commission had also considered the question of the linkage between the countermeasures envisaged in Part Two and dispute settlement. The countermeasures regime would be the main topic of the Special Rapporteur's next report. The discussion had also provided the pretext for a preliminary consideration of the eventual form of the draft articles, which remained to be decided.

13. Governments were invited to submit comments, in particular on the definition of "injured State" (art. 40) and its legal consequences, cessation (art. 41), reparation (arts. 42-46), countermeasures (arts. 47-50), and whether the consequences of the international crimes specified in articles 51-53 were appropriate for the category of obligations towards the international community as a whole and/or breaches of peremptory norms. The Commission would also like to receive comments from Governments on the series of suggestions contained in paragraph 29 of its report.

14. **Mr. Perez Giralda** (Spain) said that his delegation attached great importance to the question of the international responsibility of States. It also thought that the Commission's work should lead to the drafting of an international convention on the topic. During the consideration of the Special Rapporteur's first report Spain had joined with other delegations in agreeing to defer a decision on the method of dealing with the crimes covered by article 19 even though during the second reading it had come out in favour of a strengthened regime of responsibility with regard to the most serious violations of international law, i.e. violations of *jus cogens* rules or *erga omnes* obligations. In that connection his delegation reemphasized the need to provide in the draft articles for a special regime of responsibility for that category of serious violations, regardless of whether the language used in article 19 was retained.

15. The Spanish delegation agreed with some members of the Commission that any change to the draft articles adopted in 1996 must be meticulously justified and that the systematic use by the Special Rapporteur of the doctrinal distinction between primary and secondary rules with a view to restructuring the whole of the text might be debatable in some cases.

16. The deletion from the Commission's text of draft articles 20 and 21, on the distinction between obligations of conduct and obligations of result, was not entirely legitimate.

While it was true that the distinction was more conceptual than normative, it was of some use in practice and in the jurisprudence.

17. It was also necessary to retain in the draft articles a provision reaffirming the rule of the prior exhaustion of domestic remedies. Even if the scope of that rule would depend on its concrete application for each category of primary rules, the Commission would not seem justified in leaving out article 22 of the 1996 text. The future codification of the rules on diplomatic protection should not be invoked in order to eliminate the rule of the exhaustion of local remedies from the draft articles on State responsibility. There was no doubt that the rule was applied in the international practice as a general principle during the preliminary stage concerned with recognition of the international responsibility of a State. The examples given by the Special Rapporteur concerning the decisions of human rights bodies with regard to domestic laws which were incompatible with the treaty rules constituted an exception to the rule of the exhaustion of domestic remedies which did not justify derogation of that rule.

18. Article 29, concerning consent as a circumstance precluding wrongfulness, must also be retained. Spain agreed with the Special Rapporteur that the existence of consent precluded the wrongful act and that there was therefore no need to refer to a circumstance precluding wrongfulness. However, the practice showed that in some cases the debate on the existence of a wrongful act was in fact a debate on the existence of consent on the part of the organs of the State. The regulation of consent in the draft articles, together with a commentary analysing its scope, content and elements on the basis of diplomatic and international legal practice, was an interesting contribution by the Commission which would help to strengthen legal certainty in international relations.

19. On the other hand, the usefulness of including in the draft articles a specific provision on non-compliance caused by the prior non-compliance of another State was more debatable. In his proposal the Special Rapporteur developed a scheme of possible reactions to the commission of a wrongful act which was different from the general regime of countermeasures. That proposal entailed a risk — that non-compliance with a particular obligation would be legitimized without reference to the general conditions limiting the application of countermeasures.

20. The application of countermeasures must also be regulated in the draft articles, in Part Two in fact, without prejudice to the insertion of a statement of principle in Part One in the chapter on circumstances precluding wrongfulness. It would be necessary to spell out in Part Two the conditions and the limits for the application of countermeasures as well as the procedures for settlement of any disputes which might arise.

21. Lastly, Spain agreed with the Special Rapporteur and the Commission on maintaining the restrictive character of recourse to the state of necessity set forth in article 33 of the 1996 draft. Nonetheless, it wished to draw attention to the reference to the Fisheries Jurisdiction Case (Spain v. Canada), discussed in paragraph 285 of the report of the Special Rapporteur. In that case, the arrest of a Spanish vessel on the high seas and by force could in no way be justified by the state of necessity, and the case in question should not be mentioned in the commentary on article 33.

22. With regard to jurisdictional immunities of States and their property, Spain did not favour the inclusion of the criterion of purpose in the definition of commercial transactions and believed that only the nature of the transaction should be taken into account for the purposes of immunity. As the question was being left to the discretion of the Courts, his delegation could accept the proposal not to include a definition in the draft articles. It would be useful, as had already been suggested, to incorporate "constituent units of a federal State" and "political subdivisions of the State" in the definition of the term "State".

23. His delegation supported the conclusions of the Working Group with regard to the concepts of contracts of employment and State enterprises. As for measures of constraint against a State's property, one of the most sensitive questions, it believed that the proposals of the Working Group provided a sound basis for discussion.

24. **Ms. Fernández de Gurmendi** (Argentina), commenting on Chapter V (State responsibility) of the Commission's report, said that the definition of "injured State" was a crucial element, since the concept was directly linked to that of damage and the distinction between international crimes and delicts: the decisions concerning the latter should therefore necessarily be reflected in the definition of the term "injured State". Draft article 40, paragraph 2, set out a list of situations which was far from exhaustive, particularly since it made no mention of either bilateral custom or breach of obligations arising from a unilateral act, which could be *uti singuli* or *erga omnes*. While there was no question of including a precise list in article 40 and the reference to customary law in subparagraph (e) might cover the above-mentioned situations, the exclusion of any norm from the list might nonetheless cause confusion.

25. Her delegation agreed with the suggestion to draw a distinction between a State and States directly injured, and other States. Indeed, when a violation of a peremptory norm was committed, a distinction could and should be made between the State directly affected by the breach of that norm, and other States. The same held true for States affected by the perpetration of an "international crime" — if the term was going to be retained at all. The discussion should be pursued in the light of the observations just made in order to specify the content of paragraph 3 of article 40, whereby all States would be considered "injured States" in the case of an international crime.

26. The concomitance of all the consequences of the wrongful act listed in Chapter II when an "international crime" was committed could not possibly be required. Nonetheless, that was the solution derived from reading draft article 40 (paragraph 3) in the context of draft article 51. In her delegation's view, only the State directly affected could claim reparation for the damage suffered; the other States must be satisfied with the obligations set forth in draft articles 41 (Cessation of wrongful conduct) and 46 (Assurances and guarantees of non-repetition), without prejudice to the provisions of Chapter VII of the Charter of the United Nations.

27. The International Law Commission had also proposed that the question of compensation should be studied as carefully as possible. Her delegation believed that draft article 44 could be supplemented by various rules derived from international practice and jurisprudence, such as the principle whereby damage suffered by a national was the measure of damage suffered by the State. With regard to the form of satisfaction, her delegation had reservations with regard to draft article 45, paragraph 1 (c), stipulating that, in cases of gross infringement of the rights of the injured State, it could claim damages and interest reflecting the gravity of the infringement. Since the "Carthage" and "Manouba" cases had come before the arbitral tribunal, international law did not permit the imposition of monetary damages and interest for satisfaction in the case of moral prejudice. Those cases were, of course, very old; however, in that connection, the case of the "Rainbow Warrior" could be invoked, since it had witnessed the introduction of new forms of reparation (which some had called "constructive reparation") that could be adapted to the draft articles under consideration.

28. With regard to countermeasures, her delegation reaffirmed its position, namely, that such acts could be tolerated under international law only as a last-resort solution in exceptional cases. The practice must therefore be clearly and precisely regulated. Despite some drafting difficulties, her delegation was satisfied with the provisions of draft articles 47 to 50, which formed a sound point of departure. Nonetheless, it wished to join other delegations in objecting to the linkage between countermeasures and obligations in relation to dispute settlement. Her delegation supported the reason for the proposal, namely, the desire to prevent abusive recourse to countermeasures; however, she noted that the effect could be counterproductive and urged the International Law Commission to continue exploring other possible solutions.

29. **Mr. Abraham** (France) summarized the concerns expressed by his Government with regard to articles 40 to 53. France had proposed a redrafting of article 40 on the injured State, which should make an explicit reference to material or moral damage suffered by the State in question. Article 41 on the cessation of wrongful conduct could be deleted if article 36 on consequences of an internationally wrongful act were redrafted. While France generally agreed with the principles set out in articles 42 to 46, it questioned, on the other hand, the appropriateness of including the articles on countermeasures in the draft articles, which should focus exclusively on measures to compensate the damage sustained. Lastly, his delegation reaffirmed its reservation in principle to articles 51 to 53 on international crimes.

30. Wishing to make a few remarks on paragraph 29 of the Commission's report, he said that France favoured the idea of drawing a distinction between a State and States specifically injured by an internationally wrongful act, and other States which had a legal interest in the performance of the relevant obligations. It would be important, however, to establish what constituted that distinction and to specify the concept of injured State. The legal interest, could not be reduced merely to the interest that each State might have in ensuring respect for international law by other States: it must therefore be identifiable and specific.

31. In his delegation's view, international responsibility should be restricted to the protection of the State's own rights and interests. Draft article 40 should therefore be recast in such a way as to indicate that the State could be considered "injured" if it had suffered damage resulting from the infringement of a right that had been created or was established in its favour, or had been stipulated for the protection of a collective interest arising out of a treaty by which it was bound. The State could also be considered injured if it had been established that the enjoyment of its rights or the performance of its obligations had been necessarily affected by the internationally wrongful act of another State or that the obligation infringed had been established for the protection of human rights and

fundamental freedoms. In those circumstances, the aforementioned legal significance was clear. While awaiting with great interest the results of the Commission's thoughts on the issue, he recalled that his Government had suggested a more analytical version of article 44 — relating to compensation — which made no reference either to interest or to loss of profits.

32. His delegation agreed with the Commission that it would be inappropriate to link the taking of countermeasures with binding arbitration, since the result would be to give the very State that had committed the internationally wrongful act the right to initiate arbitration. His delegation had no objection to the proposal that the draft articles should deal with the issues raised in cases where a number of States were involved in the breach of an international obligation or injured by an internationally wrongful act.

33. With regard to chapter IX, his delegation appreciated that the aim was to put into practice the principle of the non-harmful use of the territory of the State. He recalled the three options offered by the Special Rapporteur in relation to the future course of action on the question of liability: (a) to proceed with the topic and finalize some recommendations; (b) suspend the work until the Commission had finalized its second reading of the draft articles on the regime of prevention; or (c) to terminate the work unless the Commission was given a fresh mandate by the General Assembly.

34. While recognizing that the trend seemed to be against any general formulation of strict State liability, his delegation believed that State liability could be seen as no more than residual compared with the liability of the operator of the activity resulting in transboundary harm. To date States had admitted liability only under specific treaties, such as the 1972 Convention on International Liability for Damage Caused by Space Objects, on the grounds that such instruments related to activities exclusive to States, which was probably not true of all the activities envisaged in the draft articles.

35. His delegation was aware of the implications of abandoning the second part of the draft articles and the treatment of liability and was therefore not opposed to the Commission's suspending its work until it had finalized its second reading of the draft articles on prevention and weighed all the consequences. It was to be hoped that the Commission would take account of the position of States which could accept only residual liability for transboundary harm caused by lawful activities.

36. **Mr. Cunha** (Portugal), reverting to chapter IV, said that his delegation welcomed the Commission's emphasis on human rights in developing the topic. Indeed, it considered that respect for the will of the persons concerned and thus the free choice of nationality were of fundamental relevance in the equation of interests at stake. It therefore reaffirmed the importance of draft article 1 on the right to a nationality, which reflected the application to the whole set of draft articles of the principle enunciated in article 15 of the Universal Declaration of Human Rights.

37. His delegation welcomed the obligations set out in draft article 4 on the need to avoid statelessness as a result of State succession, in draft article 5 on the presumption of nationality and in draft article 13 on the right of a child to nationality. His delegation had not changed its position regarding the maintenance in the draft articles of the principles of family unity, non-discrimination and the prohibition of arbitrary decisions concerning nationality. In that regard, he emphasized that family unity and family reunion were matters of major humanitarian concern in situations of State succession and deserved to be fully addressed. Also, with regard to the "appropriate measures" that States should take under draft article 12, it would be preferable for the provisions to be drafted more precisely and affirmatively, stating the principle of family unity and addressing the matter of unreasonable demands as the exception that it was.

38. While recognizing the importance of the right to nationality and the usefulness of the adoption by the General Assembly of a declaration, as recommended by the Commission, his delegation noted that that should not exclude the possibility of elaborating a multilateral, legally binding instrument, based on the same principles, as the most appropriate form of ensuring the full exercise of their rights by individuals.

39. Echoing the concern expressed by other delegations, his delegation felt that it would be useful to undertake a more thorough reflection on the principle of habitual residence in the context of State succession.

40. Lastly, turning briefly to the question of jurisdictional immunities of States and their property, he said his delegation also considered that a convention on the topic was a desirable aim and looked forward to contributing to the discussions of the Working Group on the subject. It took note with interest of the idea of drawing up a "model law" as a means of assisting domestic legislators and courts with a set of authoritative norms relating to the important issue of State immunity.

41. **Mr. Lammers** (Netherlands) said that his delegation approved of the amalgamation of former draft articles 16, 17, paragraph 1, and 19, paragraph 1, in one newly

formulated draft article 16 to the effect that there was a breach of an international obligation by a State when an act of that State was not in conformity with what was required of it by that obligation, regardless of its origin or character. It also agreed with the modification of draft article 18, whereby an act of a State should not be considered a breach of an international obligation unless the State was bound by the obligation in question at the time that the act occurred.

42. His delegation considered that there was no need to make a distinction between obligations of conduct, obligations of result and obligations of prevention. It therefore agreed that articles 20, 21 and 23 of the 1996 draft should be deleted. It also agreed with the reformulation suggested by the Special Rapporteur of draft article 24, which dealt with the extension in time of internationally wrongful acts.

43. With regard to the distinction between composite acts and complex acts, his delegation shared the view of the Special Rapporteur that the legal regime applying to composite acts would govern complex acts as well. Accordingly, there seemed no reason to maintain the concept of complex acts in the draft articles. It had doubts, however, with regard to the narrower understanding of the concept of composite acts as proposed by the Special Rapporteur, in that it would exclude simple obligations breached by composite acts, such as the obligation of a riparian state not to take more than a certain amount of water per year from a boundary river, which that State breached by taking slightly more than the permitted quota each month. According to the Special Rapporteur, the breach in such a case occurred only when the State had exceeded the annual quota, not when the action began. In the view of his delegation, the totality of takings should be considered unlawful, for it was not the last takings in themselves that constituted the transgression but the total number.

44. The Netherlands supported the reformulation of articles 27 and 28 proposed by the Special Rapporteur, for it clarified the international responsibility of a State which aided or assisted another State or exercised direction or control over it in the performance of an internationally wrongful act. According to the new wording international responsibility was triggered as soon as the State in question acted with knowledge of the circumstances of the internationally wrongful act. However, problems might still arise in a case of coercion which was not itself unlawful under international law.

45. The Netherlands was in favour of retaining article 29 (Consent) but thought that paragraph 2 should be deleted because the principle of consent could apply to some peremptory norms such as the prohibition of military intervention in the territory of another State.

46. It also supported the inclusion of a new article on compliance with a peremptory norm of international law as a circumstance precluding wrongfulness. On the other hand, it was not convinced of the usefulness of adding a new paragraph to article 34 in order to make it clear that the lawful exercise of the right to self-defence did not imply a dispensation from compliance with the rules and principles of *jus in bello*, since such compliance was implicit in the notion of "a lawful measure of self-defence".

47. Countermeasures must be maintained in an article in chapter V of Part One, for they constituted an important circumstance precluding wrongfulness. The reformulation of article 30 proposed by the Special Rapporteur might therefore be considered an improvement, not least because of the explicit link made with other articles on countermeasures. The linkage between countermeasures and the peaceful settlement of disputes was problematic but, whatever the approach, the State taking countermeasures and the State against which they were taken should have the same possibilities of recourse to means of peaceful settlement.

48. The concept of the new article 30 *bis* proposed by the Special Rapporteur should be elaborated further, especially with respect to its relations with countermeasures and *force majeur*.

49. His delegation could not agree with the deletion from article 31 (*Force majeur*) of the term "fortuitous event" unless the situation described resulted from a material impossibility for the State to act in conformity with an international obligation. It agreed with the Special Rapporteur that *force majeur* could not be invoked by a State which had voluntarily assumed the risk of such an occurrence by assuming the obligation. It would even be in favour of a more restrictive definition of the exception to the possibility of invoking *force majeur*, i.e. when it was the result of conduct of the State invoking it, even if such conduct was not necessarily wrongful.

50. Article 32 (Distress) should be based on a more flexible criterion of emergency measures taken by a person to protect the lives of other persons entrusted to him. It would thus be possible to avoid the phrase "reasonably believed", which was far too subjective.

51. The Netherlands was in favour of the retention of an article on states of necessity in chapter V of the draft articles and had noted the Commission's conclusion that a state of necessity should not be invoked improperly to justify

recourse to force in the territory of another State. It was therefore useful to state in article 33 that the act must not seriously impair an essential interest of the State towards which the obligation existed or the common or general interest. It would also be useful to address in article 33 or in the commentary the problem of scientific uncertainty and the precautionary principle.

52. His delegation supported article 35 (Consequences of invoking a circumstance precluding wrongfulness), provided that such invocation was without prejudice to the cessation of any act not in conformity with the obligation and the subsequent compliance with it when and to the extent that the circumstance precluding wrongfulness no longer existed.

53. **Mr. Czaplinski** (Poland) said that his delegation recognized the validity of the Special Rapporteur's arguments concerning the need to amend and reformulate the draft articles adopted in 1996, but it was afraid that such an exercise might further delay the completion of the draft articles. Nevertheless, and without prejudging the outcome of the Commission's work, it would prefer the draft articles to take the form of guidelines or a solemn declaration by the General Assembly rather than the form of a convention.

54. His delegation fully supported the Special Rapporteur's proposal to simplify the draft articles, beginning with the provisions of article 16. It did not believe, however, that the text of that article raised the issue of conflicting obligations or the issue of a hierarchy of rules of international law. In the event of a conflict between an obligation under international law or *jus cogens* norms, *erga omnes* obligations or obligations under Article 103 of the Charter of the United Nations, the question of international responsibility would not arise, even if the right to compensation could be invoked. On the other hand, the introduction of the notions of *jus cogens* and *erga omnes* obligations in the law of State responsibility would require extensive qualification. While the notion of peremptory norm did indeed exist in the law of treaties as a ground of invalidity, the definition of peremptory norm in the Vienna Convention on the Law of Treaties was insufficient for the needs of the law of State responsibility. The notion of *erga omnes* obligations involved procedural issues which would have to be considered in the context of the definition of injured State. Poland would be in favour of replacing the notion of international crime of a State by the notion of a "particularly serious breach of an international obligation".

55. His delegation agreed with some members of the Commission that the inclusion of the rule of the exhaustion of local remedies was not necessary, since on the one hand the existence of an international delict within the meaning of draft article 16 was independent of the existence of local remedies, and on the other hand the lack of local remedies might in itself constitute an internationally wrongful act giving rise to a separate responsibility.

56. With regard to the implication of a State in the internationally wrongful act of another State, it would be desirable for the Commission to examine the responsibility of the States members of an international organization in respect of the organization's acts, especially as a number of recent events had shown that a departure from the rule of the non-responsibility of the States members of an international organization taken as a separate subject of international law could not be completely excluded.

57. The draft articles on the circumstances precluding wrongfulness might be too detailed. In particular, it would be better to retain the former version of draft article 35 since it was clear that the circumstances precluding the wrongfulness of an act were in themselves temporary and did not affect the validity of the international obligation in question.

58. His delegation did not share the Commission's opinion as to the procedure for invoking a circumstance precluding wrongfulness (art. 34 *bis*). The reference to the Charter procedures should be linked to the situations covered by draft article 29 *bis* (Self-defence), while the procedures contained in the Vienna Convention on the Law of Treaties should apply to issues of *jus cogens*. The Commission was to be congratulated on its thorough discussion of the interrelations of the law of State responsibility both with the law of treaties and with the criminal responsibility of individuals.

The meeting rose at 4.50 p.m.